BRIEF IN SUPPORT OF PETITION.

Jurisdiction.

Petitioner would invoke the jurisdiction of this Court under Sec. 240 (a) of the Judicial Code as amended by Act of February 13, 1925, U. S. C., Title 28, Sec. 347, to review the decree of the U. S. Circuit Court of Appeals for the Seventh Circuit entered July 16, 1942 (petition for rehearing submitted by leave of Court denied August 17, 1942) (R. p. 239) affirming the decree of the District Court (Northern District of Illinois, Eastern Division) (R. p. 168) which held the Scott Reissue Patent to be valid and infringed. This petition is presented within the time allowed by statute.

Statement.

The foregoing petition contains a summary of the material facts. The petition also sets forth the reasons relied on for the allowance of the writ, as well as a statement of the questions involved.

Specifications of Errors.

The Circuit Court of Appeals for the Seventh Circuit erred:

(1) In failing to decree that the reissue claims in suit are invalid because they are for an invention other than the invention claimed in the original patent.

(2) In failing to construe the claims in accordance with definite limitations made therein by the applicants for the patent.

(3) In failing to decree that the petitioner's device does not infringe the claims of the reissue patent in suit.

(4) In failing to decree that respondent was not entitled to a favorable decree during the continuance of the contractual relationships which it had with substantially the entire industry.

(5) In ordering the entry of a decree granting respondent an accounting.

(6) In failing to award costs to petitioner.

Argument.

We feel that the facts set forth in the petition are of such a nature that further argument is unnecessary. We wish, however, to add that the original specification while referring to "paste," did not define anything in connection with that paste as to its fluidity. It was only after final rejection that an amendment was made qualifying the word paste so as to define it as of such a consistency that when the particles were deposited upon the underlying enamel surface the particles would remain separated so that the volatile materials could be driven off during firing. That alone, in our judgment, made a finding of non-infringement necessary; yet the reissue further qualified the meaning of the word "paste" by definitely stating that the particles when deposited must not "run" together,—renounced the claims of the original patent, and inserted claims based upon that definition. It is obvious that the decision of the Circuit Court of Appeals (the only evidence being to the effect that petitioner's material instantly runs together) disregarded what was said by this Court in Schriber-Schroth, *supra.*

If the patent here in suit is supposed to be the fundamental patent which respondent contends for, in that it

controls an industry, then contractual relationships which do not take account of its expiration date render recourse to the Courts under such patent inequitable.

Respectfully,

MAX W. ZABEL,
Counsel for Petitioner.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss:

MAX W. ZABEL, being duly sworn, deposes and says that this Petition for a Writ of Certiorari is presented in good faith, that he believes it to be sound in law and in fact, and that it is not presented for the purposes of delay.

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Subscribed and sworn to before me this ..... day of September, 1942.

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Notary Public.

My commission expires .....